

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF OKLAHOMA**

In re:) Case No. 24-80617
) (Chapter 11)
C M HEAVY MACHINERY, LLC)
)
Debtor.)
)

**SECOND AMENDED APPLICATION TO APPROVE EMPLOYMENT OF
WHITTEN BURRAGE AS SPECIAL COUNSEL TO ABOVE CAPTIONED
DEBTOR**

COMES NOW CM Heavy Machinery, LLC (the “Debtor”), as debtor and debtor in possession and applicant herein (the “Debtor”), by and through the undersigned counsel, and respectfully files this Second Amended Application (the “Application”) and requests, pursuant to 11 U.S.C. § 327(e), employment of Reggie N. Whitten, Michael Burrage, Hannah Whitten, and Blake Sonne of WHITTEN BURRAGE, 512 North Broadway Avenue, Suite 300, Oklahoma City, OK 73102 (collectively referred to herein as “Whitten Burrage”) to act as “special counsel” in the above styled and numbered Chapter 11 bankruptcy case. In support of his application, Debtor would show the Court the following:

1. On August 8, 2024, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq.
2. The Debtor has continued in possession of his property and is now operating and managing his business and property.
3. The professional services that Whitten Burrage will render if the instant Application is approved, include but are not limited to, the following:

a. Provide legal advice and services with respect to prosecution of a breach of contract and bad faith civil litigation case against Debtor's insurer, AXIS Insurance Company, and Debtor's insurance agent, Caden Bolles and Bolles & Associates, LLC d/b/a Multi County Insurance, and preparation of any associated pleadings pertaining thereto, relating to an insurance claim submitted by Debtor in September 2023 pertaining to a fire loss that occurred in August 2023.

b. Provide legal advice and services with respect to adjudication and the recovery of damages, costs, and attorney's fees and the judgments obtained by Debtor against its insurer Axis Insurance and its insurance agency Caden Bolles and Bolles & Associates, LLC d/b/a Multi County Insurance, including damages for breach of contract, bad faith, recovery of costs and attorney's fees, pre-judgment interest, and punitive damages and preparation of any associated pleadings, hiring of expert witnesses, and/or related work thereto;

4. Prior to representing Debtor to pursue this civil litigation matter, Whitten Burrage did not perform any legal services for Debtor.

5. To the best of Debtor's knowledge, Whitten Burrage represents no interest adverse to the Debtor, the creditors, or the estate on the matters upon which it is to be engaged, and its employment upon the terms as set forth herein would be in the best interests of the bankruptcy estate.

6. Whitten Burrage has agreed to provide legal services on a contingency fee basis with compensation to be paid only upon a settlement, resolution, and/or trial verdict and collection of a judgment via application and order of the Court. Whitten Burrage will incur all costs and expenses of the litigation, to be reimbursed only upon a resolution or

settlement of the civil litigation case. Whitten Burrage's contingency fee agreement is a hybrid fee arrangement with a reduced 10% fee with any recovery or settlement up to \$1,406,971 and a 50% contingency fee with a recovery or settlement for amounts above \$1,406,971. This hybrid and reduced fee arrangement was agreed to by Whitten Burrage to account for the ACV policy benefits previously offered by the Debtor's insurer. Although the amount of such ACV being offered is an important part of Debtor's bad faith case, Whitten Burrage has agreed to a reduction of fee percentage up to that amount. Debtor requests that the fee agreement attached as Exhibit 1 be authorized by the Court. Such contingency fee agreement and the 50% percentage outlined herein are customary in this type of complex civil litigation. A copy of the fee agreement is attached to this Application as Exhibit 1.

7. Debtor has made changes to Exhibit 1 to address concerns raised by the US Trustee and the version of the fee agreement attached as Exhibit 1 has been approved by the US Trustee upon information and belief.

WHEREFORE Debtor respectfully requests this Court authorize it to employ and appoint Whitten Burrage as special counsel under 11 U.S.C. 327(e) as outlined herein.

Respectfully submitted,

Dated: January 18, 2025.

By: /s/ Blake Sonne
Reggie Whitten, OBA #9576
Michael Burrage, OBA #1350
Blake Sonne, OBA #20341
Hannah Whitten, OBA #35261
WHITTEN BURRAGE
512 N. Broadway Ave., Suite 300
Oklahoma City, Oklahoma 73102
Telephone: (405) 516-7800
Facsimile: (405) 516-7859
Emails: mburrage@whittenburragelaw.com
rwhitten@whittenburragelaw.com
bsonne@whittenburragelaw.com
hwhitten@whittenburragelaw.com
Proposed Attorney for Debtor

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of January, 2025, a true and correct copy of the above and foregoing instrument was served via ECF filing and via mail, postage prepaid, on those entities listed on the Matrix and ECF registrants in this case.

/s/ Blake Sonne OBA#20341
Blake Sonne